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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.S. et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.B.,

Defendant and Appellant.

E056518

(Super.Ct.Nos. J187395 & J243588
& J243589)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gregory S. Tavill,
Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and
Appellant.

Jean-Rene Basle, County Counsel, Jeffrey L. Bryson, Deputy County Counsel,
for Plaintiff and Respondent.

No appearance for Minors.

Defendant and appellant L.B. appeals from the juvenile court's orders (1) terminating her probate guardianship of her granddaughter, S.H. (Granddaughter) (Welf. & Inst. Code, § 728);¹ and (2) removing Granddaughter from her care. L.B. asserts the juvenile court erred by (1) not following the proper procedures for terminating a probate guardianship; (2) improperly denying her reunification services; (3) incorrectly performing the best interests analysis; and (4) applying the incorrect standard of proof. San Bernardino County Children and Family Services (the Department) agrees the juvenile court did not follow the proper procedures for terminating a probate guardianship, but asserts the court's decision should be affirmed because "the technical error caused no prejudice or due process violation." We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

The parties have presented a comprehensive history of L.B.'s interactions with several of the minors that were in her care. Accordingly, this court will also present details related to other minors in L.B.'s care, rather than focusing solely upon L.B.'s interactions with Granddaughter, because issues with the other minors are relevant to understanding the procedural posture of the case involving Granddaughter.

A. RELATIONSHIPS

This case presents a variety of people with familial relationships. In order to assist the reader, we list them here, in a single place: L.B. was married to A.S. (Father);

¹ All subsequent statutory references will be to the Welfare and Institutions Code, unless otherwise indicated.

Father's girlfriend was Sarah; D.S. (Stepdaughter) was the daughter of Father and L.R. (born June 1996). L.B. had four biological children of her own: three girls and one boy. One of L.B.'s daughters, A.S. (Daughter), was Stepdaughter's half-sibling, due to Father fathering both girls. A.S. was born in February 2000. L.B. was also the legal guardian of her granddaughter, S.H. (Granddaughter). Granddaughter was born in April 2004.

B. STEPDAUGHTER'S 2003 DEPENDENCY CASE

In March 2003, Father moved out of L.B.'s home, and moved into Sarah's home. Stepdaughter told Sarah. that Father had been engaging in oral copulation with her. Sarah contacted L.B., and then both women contacted the sheriff's department. When speaking to the deputy, six-year-old Stepdaughter described Father taking "his penis out and put[ting] it in her private and that there was burning on her private and that he would move his thing back and forth while in her private and breath[e] heavily." Stepdaughter also described Father sodomizing and orally copulating her since the age of four. Father admitted engaging in intercourse with Sarah while Stepdaughter was in the same bed, but denied sexual contact with Stepdaughter.

Stepdaughter's biological mother, L.R., had an "extensive history of neglect, substance abuse and the child was declared a dependent of the court on August 19, 1999." Father was awarded custody of Stepdaughter in 1999. Following the 2003 allegations, the Department placed Stepdaughter in a foster home. On March 28, 2003, at Stepdaughter's detention hearing, the juvenile court placed Stepdaughter in L.B.'s custody. The court ordered there be no contact between Father and Stepdaughter.

In December 2003, Father was incarcerated due to charges of sexually abusing Stepdaughter. In April 2005, Father was still incarcerated awaiting trial. On April 21, 2005, L.B. was appointed Stepdaughter's legal guardian.

C. 2012 DETENTION

Seven years later, on April 5, 2012, when Stepdaughter was 15 years old, the Department filed a supplemental dependency petition in Stepdaughter's case (§ 387) alleging (1) L.B. struck Stepdaughter's legs with an extension cord resulting in "deep scarring still visible four months later"; (2) L.B. failed to seek medical care for Stepdaughter's leg injuries; (3) Father was convicted of engaging in oral, anal, and vaginal intercourse with Stepdaughter; (4) on January 28, 2012, Father was found in a motel room with Stepdaughter, and Father was likely the father of Stepdaughter's unborn child; (5) L.B. failed to protect Stepdaughter from Father's abuse and did not report Stepdaughter as missing; and (6) L.R. had a substance abuse problem that negatively impacted her ability to parent Stepdaughter.

Stepdaughter told a Department employee that L.B. and L.B.'s boyfriend beat her with an extension cord to the point where she could not breathe, and the walls were splattered with blood. Stepdaughter was then forced to clean the blood off the walls. Stepdaughter "had visible scarring on her left leg that was consistent with lash marks." Stepdaughter said Daughter and Granddaughter were present in the home during the whipping; Granddaughter was in the room during the whipping, while Daughter was in a different room. The Department removed Stepdaughter, Daughter, and Granddaughter from L.B.'s custody.

The Department filed a petition concerning Granddaughter. (§ 300.) The Department alleged L.B. failed to protect Granddaughter by whipping Stepdaughter with an extension cord while Granddaughter was in the same room. (§ 300, subd. (b).) Granddaughter's mother died in 2008. Granddaughter's father, J.H., expressed a desire to take custody of Granddaughter. A dependency petition was also filed concerning Daughter. (§ 300.)

On April 6, 2012, the juvenile court ordered Stepdaughter be placed with a family friend, R.W. The court ordered that L.B. and Father not have contact with Stepdaughter. In regard to Granddaughter, the juvenile court found a prima facie case had been established against L.B., and ordered that Granddaughter be placed in foster care. The court ordered visitation between L.B. and Granddaughter once per week for one hour.

D. JURISDICTION

Granddaughter told a Department employee that L.B. "had beaten" Stepdaughter. Granddaughter brought Stepdaughter a towel after the extension cord incident, because Stepdaughter was bleeding. L.B. denied striking Stepdaughter and claimed "a boy in Anaheim" inflicted Stepdaughter's injuries. However, L.B. did not seek medical attention for Stepdaughter's wounds or report Stepdaughter as missing when she ran away from L.B.'s house several weeks after the extension cord incident. Father admitted sexually abusing Stepdaughter when she was younger, but denied present day abuse. Stepdaughter said Father was the father of her unborn child, which Father denied.

Stepdaughter told a forensic interviewer she wished she and Father could still orally copulate one another, because that was how Father expressed his love and it made her feel special. Stepdaughter told the interviewer she was able to contact Father after he was released from incarceration because L.B. “pulled up in a car” with Father, and Stepdaughter hugged Father and spoke to him.

Stepdaughter reported L.B. had previously hit her with a belt and struck Granddaughter and Daughter. In its Jurisdiction/Disposition Report, the Department recommended Granddaughter be placed with J.H. The Department wrote: “The undersigned sees no further reason why [the Department] should be involved in this case, as [J.H.] is a non-offending parent.”

At the jurisdiction hearing on April 27, 2012, L.B. did not contest terminating her guardianship over Stepdaughter; however, she did contest terminating (1) her guardianship of Granddaughter, and (2) her parental rights to Daughter. The juvenile court scheduled the matter for mediation. At the mediation, L.B. agreed to terminate her guardianship of Stepdaughter, but refused to terminate her guardianship over Granddaughter.

On May 8, 2012, Stepdaughter admitted to a San Bernardino police detective that she and Father engaged in sexual intercourse, and that Father was the father of her child. On May 17, 2012, the juvenile court found clear and convincing evidence showed Stepdaughter should be removed from L.B.’s custody, because Stepdaughter’s health would be in substantial danger if she were placed in L.B.’s home. The juvenile court found true the allegations that (1) L.B. struck Stepdaughter’s legs with an extension

cord resulting in “deep scarring still visible four months later”; (2) L.B. failed to seek medical care for Stepdaughter’s leg injuries; (3) Father was convicted of engaging in oral, anal, and vaginal intercourse with Stepdaughter; (4) on January 28, 2012, Father was found in a motel room with Stepdaughter, and Father is likely the father of Stepdaughter’s unborn child; and (5) L.B. failed to protect Stepdaughter from Father’s abuse and did not report Stepdaughter as missing.

During the hearing, while speaking to the attorneys, the juvenile court said, “I took a few minutes before coming out here because I checked, and my understanding is that the standard to terminate a guardianship is best interest of the child.” L.B.’s attorney (Anderson) argued terminating probate guardianships required more than just a best interests analysis. Anderson asserted the juvenile court had to “look at the bond in the best interest prong”; she explained that “You have to look at the bond between the caretaker and how long the child [has] lived in that home.” The juvenile court explained, “Yes, but it’s all part of the best interest analysis. It’s what goes into that.” Anderson responded, “Exactly.”

The Department argued, “[I]t does come down as to whether or not it’s in the best interest to terminate that guardianship and move forward with the child being in the care of the father in regards to [Granddaughter].” The Department asserted L.B. should not be guardian to anyone, given (1) whippings were occurring; (2) injuries were occurring; and (3) contact with a sexual abuser was being permitted. The Department argued L.B. was an unfit guardian and requested the juvenile court terminate L.B.’s

guardianships over Stepdaughter and Granddaughter. The Department requested L.B. receive reunification services for the case involving Daughter.

The juvenile court found it would be in Stepdaughter's best interests to terminate L.B.'s guardianship, and therefore terminated Stepdaughter's guardianship. The juvenile court found it would be in Granddaughter's best interests to be in J.H.'s custody, so she could have a "proper relationship with her father." The juvenile court also terminated L.B.'s guardianship over Granddaughter.

The juvenile court found true the allegation L.B. (1) failed to protect Granddaughter by whipping Stepdaughter with an extension cord in the presence of Granddaughter (§ 300, subd. (b)); and (2) L.B. placed Granddaughter at a substantial risk of suffering sexual abuse by failing to protect Stepdaughter from Father (§ 300, subd. (d)). The juvenile court found Granddaughter's health would be at substantial risk if she were returned to L.B.'s custody; therefore, the court ordered Granddaughter be removed from L.B.'s care. The court ordered Granddaughter be placed in J.H.'s custody. The Department asserted a custody order was not necessary, since Granddaughter's mother was deceased. The Department offered to provide the court with a form terminating the guardianship with "the probate guardianship case number on it." The juvenile court also removed Daughter from L.B.'s custody, but ordered the Department to provide L.B. with reunification services.

DISCUSSION

A. GUARDIANSHIP TERMINATION

L.B. contends the juvenile court erred by not following the proper procedure for terminating her probate guardianship over Granddaughter. The Department agrees the juvenile court erred, but asserts (1) L.B. forfeited the argument; (2) L.B. invited the error; and (3) the error was harmless. We agree (1) the juvenile court erred; (2) L.B. forfeited the issue; and (3) the error was harmless.

First, we address the juvenile court's error. Section 728, subdivision (a), provides, in relevant part: "The juvenile court may terminate or modify a guardianship of the person of a minor previously established under the Probate Code, . . . if the minor is the subject of a petition filed under Section 300" The subdivision further provides: "[T]he court shall order the appropriate county department, or the district attorney or county counsel, to file the recommended motion. The motion may also be made by the guardian or the minor's attorney. The hearing on the motion may be held simultaneously with any regularly scheduled hearing held in proceedings to declare the minor a dependent child or ward of the court, or at any subsequent hearing concerning the dependent child or ward. Notice requirements of Section 294 shall apply to the proceedings in juvenile court under this subdivision." Section 294 lists all the various parties that must receive notification of the motion hearing, the information that must be included in the notice, the timing requirements for the notice, and the manners in which notice may be given.

In the instant case, the Department recommended Granddaughter's guardianship be terminated, which should have caused the court to direct the Department to file a motion for termination of the guardianship (§ 728, subd. (a)); however, that procedure did not occur. Instead, after the Department's recommendation, the juvenile court ordered mediation; L.B. and the Department attended mediation, and then the court held a hearing on the Department's recommendation. A motion was not filed and notice was not given. Since the juvenile court did not follow the notice and motion procedures set forth in section 728, we conclude the court erred.

Second, we consider the Department's assertion L.B. forfeited the issue on appeal. We agree with the Department. "[T]he requirement of a motion [for terminating a probation guardianship] is not fundamental to the structure of the dependency scheme, but a mere procedural requirement and, thus, is subject to forfeiture for failure to object." (*In re Angel S.* (2007) 156 Cal.App.4th 1202, 1209.) L.B. did not raise an objection in the juvenile court concerning the lack of notice and motion. Thus, we conclude L.B. forfeited the issue on appeal.

Third, we examine the record to determine if the juvenile court's procedural error is harmless beyond a reasonable doubt. (*In re James F.* (2008) 42 Cal.4th 901, 911, 918-919.) On April 24, 2012, the Department filed its Jurisdiction/Disposition Report recommending Granddaughter's guardianship be terminated. On April 27, 2012, the juvenile court held a jurisdiction hearing. L.B. and her attorney (Anderson) were present at the hearing. At the start of the hearing, the juvenile court asked, "What is the status of these cases?" Anderson, who was the first to respond, said, "We're not in

agreement with terminating the guardianship on [Granddaughter.] [¶] . . . [¶] I would ask to send this to mediation.” The juvenile court ordered L.B. and the Department to attend mediation.

The mediation occurred on May 2, 2012. L.B. and the Department “[a]ctively participat[ed] in the mediation[.]” At the mediation, L.B. agreed to end her guardianship of Stepdaughter, but contested the termination of Granddaughter’s guardianship. On May 16, 2012, the jurisdiction hearing began, and testimony was heard. The hearing continued on May 17, when Anderson argued the juvenile court must consider the best interests of the child when deciding whether to terminate a probate guardianship, including “the bond between the caretaker and how long the child[has] lived in that home.”

The record does not reveal any impediments caused to L.B. by the lack of notice and motion, given that L.B. and Anderson attended the hearings and mediation, and were able to argue against Granddaughter’s guardianship being terminated. Thus, it appears the erroneous procedure was harmless beyond a reasonable doubt, because L.B. and Anderson were able to fully participate in the proceedings.

Fourth, the Department asserts L.B. invited the procedural error by arguing, at the May 17 hearing, that the juvenile court should apply the best interests standard, thus implying the juvenile court had authority to render a decision on terminating the guardianship “then and there.” “Under the doctrine of invited error, “[w]here a party by [her] conduct induces the commission of error, [s]he is estopped from asserting it as a ground for reversal” on appeal. [Citation.]’ [Citation.]” (*McCarty v. State of Cal.*

Dept. of Transp. (2008) 164 Cal.App.4th 955, 984 [Fourth Dist., Div. Two].) L.B. may have invited the juvenile court's error by affirmatively requesting the matter be sent to mediation (as opposed to reminding the court the Department needed to file a motion); however, we conclude this issue was better settled in the context of forfeiture, rather than invited error, since L.B. did not affirmatively request the court excuse the Department from filing a motion. In sum, the trial court erred; however, we affirm the judgment because (1) L.B. forfeited the issue, and (2) the error was harmless beyond a reasonable doubt.

We now turn to L.B.'s argument. L.B. asserts she did not forfeit the procedure issue for appeal because she "contested the petition allegations, removal, and the absence of a motion to terminate [Granddaughter's] probate guardianship." L.B.'s arguments against the allegations and removal of Granddaughter are different than objecting to the lack of notice and motion. The juvenile court could not be expected to correct the notice and motion issue based upon arguments relating to the allegations and removal.

In regard to L.B. contesting "the absence of a motion to terminate," we have reviewed the record page cited by L.B., which reflects Anderson argued: "And in the probate court where the guardianship was instituted, these guardianships last until the children are 18 years old, unless a parent files a petition to terminate the guardianship. [J.H.] never did that." Anderson's comment about the lack of a petition filed by J.H. is not the same thing as objecting to the Department failing to file a motion and provide

notice. Thus, we are not persuaded L.B. preserved the issue for appeal because she did not object to the lack of notice and motion.

B. REUNIFICATION SERVICES

L.B. asserts the juvenile court erred because, prior to terminating Granddaughter's guardianship, the court made a dispositional order and did not consider providing L.B. with reunification services for Granddaughter. We disagree.

Section 361.5, subdivision (a), provides in relevant part: "[W]henever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's . . . guardians." Reunification services are supposed to be offered at the disposition stage of the proceedings, when the child is removed from the guardian's custody. (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 252-253.) "Notwithstanding the mandatory language of section 361.5, subdivision (a), a predependency or Probate Code guardianship may legally be terminated before reunification services are offered to the guardian." (*Id.* at p. 253.) The juvenile court has "authority to terminate a Probate Code guardianship at any stage in the dependency proceeding, including at the detention hearing or the jurisdictional hearing." (*Ibid.*)

At the May 17 hearing, the juvenile court said, "So in terms of the guardianship for [Granddaughter], it will be the order of the Court to terminate the guardianship." The court then rendered findings in Stepdaughter's, Daughter's, and Granddaughter's cases, i.e., it found various allegations to be true. The court concluded, "Clear and convincing evidence shows that [Granddaughter] should be removed from the physical

custody of [L.B.].” The court then said, “As indicated, this Court finds that it is in the best interest of the child to *terminate the guardianship* of [L.B.] [¶] The Court orders that [Granddaughter] *is removed* from [L.B.’s] custody and placed in the custody of the previously noncustodial father[.]” (Italics added.) The court then discharged Granddaughter as a ward of the court and dismissed the petition involving her.

We will assume for the sake of judicial efficiency that written orders for removal and termination were not required, and the court’s orders became effective at the time they were orally pronounced. (See *In re Markaus V.* (1989) 211 Cal.App.3d 1331, 1336-1337 [discussing when orders are officially “made”].) The only thing the court did after ordering Granddaughter be removed from L.B.’s custody is end Granddaughter’s dependency case. Thus, the termination of the guardianship occurred prior to the removal order. As a result, reunification services were not required for L.B. because she was no longer Granddaughter’s guardian at the time the court ordered Granddaughter removed from her care. Accordingly, the juvenile court did not err.

L.B. asserts the court removed Granddaughter from her custody prior to terminating the guardianship, and therefore, the court erred by not considering whether L.B. should be given reunification services. L.B. cites to three pages of the reporter’s transcript to support her argument. We have provided details of the transcript *ante*. Nevertheless, we repeat the juvenile court’s final remarks for Granddaughter’s case here: “The Court *orders* that [Granddaughter] *is removed* from [L.B.’s] custody and placed in the custody of the previously noncustodial father[.] [¶] The minor is *discharged* as a dependent of the juvenile court. Her case is ordered *dismissed*.”

(Italics added.) The juvenile court did not order the guardianship termination *after* it ordered removal. Thus, we find L.B.’s argument to be unpersuasive.

C. BEST INTERESTS

L.B. contends the juvenile court erred in its best interests analysis because it focused on whether it would be in Granddaughter’s best interests to develop a relationship with J.H., as opposed to focusing on whether it would be in Granddaughter’s best interests to terminate the dependency. We disagree.

We apply the de novo standard of review when determining whether the juvenile court applied an incorrect legal standard. (*People v. Brunette* (2011) 194 Cal.App.4th 268, 276.) “The sole criterion for termination of a probate guardianship is whether termination is in the minor’s best interests. [Citation.]” (*In re Xavier R.* (2011) 201 Cal.App.4th 1398, 1416.)

In making its findings, the juvenile court said, “The Court believes in terms of a factual finding that [Stepdaughter] did get whipped by [L.B.] with the cord.” The juvenile court explained that Stepdaughter might have needed discipline, but whipping the child was inappropriate. The court further explained it was problematic that L.B. took no action when Stepdaughter ran away from L.B.’s home. The juvenile court concluded L.B. failed in her role as a guardian. The court terminated Stepdaughter’s guardianship, and then addressed Granddaughter’s guardianship. The juvenile court stated it was in Granddaughter’s best interests to have a relationship with J.H.

Given the juvenile court’s statements, it appears the court applied the correct legal standard. The juvenile court did not repeat the various negative aspects of L.B.’s

care when addressing Granddaughter's case, because it had just listed them as part of Stepdaughter's case; however, it can be inferred that L.B.'s failures as a guardian of Stepdaughter also explain why it would be in Granddaughter's best interests to terminate Granddaughter's guardianship. Thus, we are not persuaded the juvenile court erred; it appears the juvenile court simply did not wish to repeat the various findings it had just set forth.

D. STANDARD OF PROOF

L.B. asserts the juvenile court erred by failing to apply the clear and convincing standard of proof when addressing the guardianship termination issue. L.B. contends the trial court erroneously applied the best interests standard. We disagree.

When the juvenile court made its various negative findings about L.B.'s care of Stepdaughter, it repeatedly used the word "clear." As examples, the juvenile court said, (1) "I think it's *clear*—we spent a lot of time on the trial about the reasons for discipline for [Stepdaughter]"; (2) "The issue really wasn't whether it was appropriate to discipline [Stepdaughter], but it was whether or not the discipline that was provided was appropriate. And *clearly*, in the view of the Court, it was not"; (3) "In terms of the guardianship, it is *clear* under the circumstances that it is in the best interest of [Stepdaughter] to terminate the guardianship with [L.B.]"; (4) "*Clearly*, it was a family in turmoil with the passing of [Granddaughter's] mom, but here we are a few years later, and the circumstances are different"; and (5) "*Clear and convincing* evidence shows that [Granddaughter] should be removed from the physical custody of [L.B.]" (Italics added.)

It appears from the juvenile court's repeated use of the words "clear" and "clearly," as well as the phrase "clear and convincing evidence," that the court was aware of, and applying, the clear and convincing evidence standard when making decisions regarding Granddaughter's welfare. Accordingly, we are not persuaded the juvenile court erred.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

KING
J.